

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

1
2 UNITED STATES OF AMERICA,
3 Plaintiff,
4 v.
5 RAFAEL CASTOIRES SANCHEZ,
6 Defendant.
7

Civil No. 97-2514 (RLA)
Crim. No. 84-328 (RLA)

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ORDER AMENDING JUDGMENT NUNC PRO TUNC

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9 The Court has before it RAFAEL CASTOIRES's *habeas corpus* motion
10 requesting that his state and federal sentences involving separate
11 convictions for the same crime be imposed concurrent to each other.
12 We will, however, treat this request as a Motion for Reduction of
13 Sentence under Rule 35 (a) of the Fed R. Crim. P. applicable to
14 offenses committed prior to November 1, 1987.

FEDERAL COURT

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16 Mr. CASTOIRES was sentenced on January 2, 1985, after having
17 pled guilty to counts One, Two, Three and Four of the Information
18 filed in Criminal Case No. 84-328 (docket No. 42), which charged him
19 with aiding and abetting the receipt of four firearms¹ that had been
20 shipped and transported in interstate commerce, after having been
21 convicted of a felony, in violation of 18 U.S.C. § 922(h)(1) and
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24 ¹ One for each count, as follows: (Count One) Colt Revolver,
25 Detective Special, .38 caliber; (Count Two) Colt Semi-automatic
26 Pistol, 25 caliber; (Count Three) Charter Arms Revolver, Model
Bulldog, .44 caliber; and (Count Four) Smith and Wesson Semi-
automatic Pistol.

2A/c: USA
2A/c: 84-328 (RLA)

1A/c: BOP Florence Co
1A/c: R. Castoires

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1 924(a) and 18 U.S.C. § 2. He received a sentence of imprisonment of
2 twenty years, five years for each of the four counts, to be served
3 consecutively to each other. The Court at the time did not address
4 the issue of whether the federal sentence was to be served
5 concurrent to the sentence defendant was already serving at the
6 state level for his conviction for illegal possession of the same
7 firearms.

8 STATE COURT

9 RAFAEL CASTOIRES SANCHEZ and three codefendants were arrested
10 on September 21, 1983, by state agents executing a search warrant at
11 an apartment in Bayamón, Puerto Rico, where they found narcotics and
12 numerous stolen items, including the firearms charged in the
13 Government's Information in this action. On June 5, 1984, after
14 pleading guilty to robbery and illegal transportation and/or
15 possession of firearms for this same crime and after having been
16 found guilty of other related crimes, defendant was sentenced by the
17 Superior Court of the Commonwealth of Puerto Rico to serve a
18 combined imprisonment term of thirty (30) years, all terms to be
19 served concurrently with each other.

20 JURISDICTION

21 The Court is being asked to consider the concurrence of these
22 separate terms of imprisonment, which were imposed at different
23 times by the local court and the federal court, two separate
24 jurisdictions, for conduct involving the same offense.
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1 We turn first to the Court's jurisdiction to hear this
2 petition. Although initially, we cast CASTOIRES's request for
3 relief as a habeas petition, in hindsight we find that it should
4 properly be treated as a petition for reduction in sentence pursuant
5 to former Fed. R. Crim. P. 35(a)², which allows a district court to
6 correct an illegal sentence at any time. United States v. Jordan,
7 884 F.2d 1297, 1298 (9th Cir.). Having thus determined that we can
8 consider a reduction in defendant's sentence, we now turn to Mr.
9 CASTOIRES' request for concurrence of his federal and state
10 sentence.

11 CONCURRENCE

12 Congress, through the Comprehensive Crime Control Act of 1984,
13 Pub.L. 98-473, Title II, c. II, § 212(a)(2), 98 Stat. 2000, has
14 expressly granted federal judges the discretion to impose a sentence
15 concurrent to a state prison term. United States v. Wills, 881 F.2d
16 823, 825-26 (9th Cir. 1989) (discussing amendments to 18 U.S.C.
17 § 3584(a)). Furthermore, "[a]lthough the new statute does not
18 directly apply to sentences for crimes... committed before November
19 1, 1987, its legislative history indicates that its intent was to
20 codify preexisting law on [concurrent and] consecutive
21 sentencing...". United States v. Hardesty, 958 F.2d 910, 914 (9th
22 Cir. 1992). Thus, 18 U.S.C. § 3584(a) unambiguously confers the
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24 ² This rule was amended in 1987 to conform to the Sentencing
25 Guidelines. The prior rule applies to defendant's case because
26 his criminal conduct occurred prior to November 1, 1987, and there
is no time limit for requesting correction of an illegal sentence.

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1 discretion upon the trial judge to impose a concurrent or
2 consecutive sentence by operating as a rule of construction. For
3 instance, when the judge is silent as to whether a sentence is to be
4 consecutive or concurrent, if the several sentences are imposed at
5 different times, the sentences are construed as consecutive
6 sentences. Wills, 881 F.2d at 826. "But the judge could, by
7 expressing otherwise, change that result" Id. (citing S. Rep. No.
8 225, 98th Cong. 2d. Sess. 127 (1983), reprinted in 1984 U.S. Code
9 Cong. & Admin. News 3182, 3310.)

10 Having thus reviewed the criminal case file, petitioner's
11 presentence report, his *habeas corpus* petition and the Government's
12 opposition thereto, the Court takes this opportunity to "express
13 otherwise". We believe a consecutive state-federal sentence of 55
14 years of imprisonment for the illegal possession of the same
15 firearms which were seized at the same time and place is an
16 "[e]xceedingly long consecutive term [which can be] avoided through
17 the exercise of judicial restraint." See Senate Judiciary Committee
18 Report, 1984 U.S. Code Cong. & Admin. News 3182 at 3309-3310.³

19 Accordingly, we hereby AMEND *NUNC PRO TUNC* defendant's Judgment
20 and Commitment Order of January 2, 1985, to state that the terms of
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23 ³ Compare also, United States Sentencing Guidelines
24 §5G1.3(b), which indicates that when the defendant is subject to
25 an undischarged term of imprisonment which resulted from offenses
26 that have been fully taken into account in the determination of
the offense level for the instant offense, the sentence for the
instant offense shall be imposed to run **concurrently** to the
undischarged term of imprisonment.

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1 imprisonment imposed in his federal sentence shall run concurrent to
2 the imprisonment terms imposed by the state court.

3 Furthermore, and pursuant to the decision of the Court of
4 Appeals for the Third Circuit in Barden v. Keohane, 921 F.2d 476
5 (3d. Cir. 1990), the Court has determined that a *nunc pro tunc*
6 designation by the Bureau of Prisons is appropriate in this case.

7 Accordingly, the Court has no objection to the Bureau of
8 Prisons' *nunc pro tunc* designation of the Commonwealth of Puerto
9 Rico for service of Mr. CASTOIRES's federal sentence commencing on
10 January 2, 1985.

11 IT IS SO ORDERED.

12 In San Juan, Puerto Rico, this 23rd day of February, 2001.

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15 RAYMOND L. ACOSTA
16 United States District Judge
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